IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 62/2006
(Smt. Jarina Banu & Ors. V/s Mohd. Umar @ Bundu)

Date of Order : 10/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. B.L.Choudhary for the petitioners.
Mr. Mukesh Patodia for the respondent.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 25.10.2005 passed by Additional Sessions Judge (Fast Track) Rajsamand (for short 'the revisional court' hereinafter) in Cr. Revision No. 22/2005 (91/03), whereby the revision petition filed by the petitioners against the order dated 07.11.2003 passed by Additional Chief Judicial Magistrate, Rajsamand (for short 'the trial court' hereinafter) in Criminal Case No. 30/99, was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders impugned.

The only grievance of the petitioners is that the petitioners filed an application under Section 125 Cr.P.C. seeking monthly allowance of maintenance against non-petitioner on 10.2.1999. The notice was served in the year 1999 on the respondent. Thereafter, the parties led the evidence and by order dated 7.11.2003, the trial court granted monthly allowance of maintenance @ Rs. 500/- in favour of each of the petitioners i.e. petitioner No.1 wife of respondent Smt. Jarina Banu, petitioner No.2 Mohaseen and petitioner No.3 Shabnam, son and daughter respectively. But while granting maintenance, the trial court fell in error in granting maintenance from the date of order i.e. 7.11.2003. On a revision, the revisional court did not interfere with the order. Hence this misc. petition.

Heard learned counsel for the parties. Carefully gone through the orders impugned.

Learned counsel for the petitioners has relied on two decisions of this Court in Prahlad son of Kishan Gopal Cheepa Vs. Smt. Jamni Daugher of Nathulal, W/o Prahlad Cheepa RLW 1999 (1) Raj. 666 and in Gayatri Vs. Om Prakash 2006 (1) WLC (Raj.) 264.

In Prahlad Vs. Smt. Jamni (supra) this Court held that the wife is entitled for the maintenance amount from the day on which she was driven out by her husband and not from the date of the application.

In Gayatri Vs. Om Prakash (supra) this Court held that the petitioner therein has also not been paid any interim maintenance by the non-petitioner. The non-petitioner has also re-married, therefore, the petitioner has no other choice but to stay with her parents and brothers. The petitioner is unable to maintain herself because of her ill-health. It is the legal and moral duty of the husband to maintain his wife and more so when he has turned her out of the house and re-married. Therefore, the learned Judge was not justified in modifying the order dated 20.10.1997. Moreover, the learned Judge has mis-read the order-sheets which have been placed before us by the learned counsel for the petitioner. A bare perusal of the order-sheets clearly reveal that the delay in the proceedings was not only due to the petitioner, but was also due to the circumstances beyond her control. Thus, she cannot be blamed for the inordinate delay of six years. On these premises, the order granting maintenance from the date of order was set aside and it was directed that the petitioner therein is entitled for the maintenance from the date of application.

In the instant case, the application was filed by the petitioners on 10.2.1999 and notice was served on the non-petitioner in the year 1999 itself and thereafter the trial court recorded the evidence. The petitioners produced their evidence and completed the same on 20.12.2001 and thereafter whatever

the delay has been occasioned it has been occasioned on account of the non-petitioner as the matter continued to remain on Board of the trial court up to 7.11.2003.

In the peculiar facts and circumstances of the case, in my view, if the petitioners are not entitled for the maintenance from the date of application, then at least, they are entitled for the maintenance from the date they completed their evidence i.e. 2012.2001.

In this view of the matter, the order passed by the trial court dated 7.11.2003 and affirmed by the revisional court vide order dated 25.10.2005, is modified to the extent that the petitioners are entitled for the monthly allowance of maintenance from 20.12.2001 the date on which they completed the evidence.

With this modification, the petition stands disposed of. The respondent shall pay arrears of maintenance to the petitioners within three months from the date of filing of certificate copy of this order.

(H.R.PANWAR),J.

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